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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNDER SEAL,

Plaintiffs,

v.

UNDER SEAL,

Defendant.

CASE NO. C 16-2487 JCS

**UNITED STATES' NOTICE
OF ELECTION TO DECLINE
INTERVENTION**

FILED UNDER SEAL

ORIGINAL

FILED

FEB 14 2020

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

1 DAVID L. ANDERSON (CABN 149604)
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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 UNITED STATES OF AMERICA ex rel.
17 STF, LLC, an organization; STATE OF
18 CALIFORNIA ex rel. STF, LLC, an
19 organization,

20 Plaintiffs,

21 v.

22 VIBRANT AMERICA, LLC, a Delaware
23 Limited Liability Company,

24 Defendant.

25 CASE NO. C 16-2487 JCS

26 **UNITED STATES' NOTICE**
27 **OF ELECTION TO DECLINE**
28 **INTERVENTION**

FILED UNDER SEAL

1 Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies
2 the Court of its decision not to intervene in this action.

3 Although the United States declines to intervene, we respectfully refer the Court to 31
4 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United
5 States; providing, however, that the “action may be dismissed only if the court and the Attorney
6 General give written consent to the dismissal and their reasons for consenting.” *Id.* The United
7 States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the
8 United States has the right only to a hearing when it objects to a settlement or dismissal of the
9 action. *U.S. ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel.*
10 *Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994). Therefore, the United
11 States requests that, should either the relator or the defendants propose that this action be
12 dismissed, settled, or otherwise discontinued, this Court provide the United States with an
13 opportunity to be heard before ruling or granting its approval.

14 Furthermore, 31 U.S.C. § 3730(c)(3) permits the Government to be served with copies of
15 all pleadings filed in the action. Accordingly, the undersigned Government counsel will file a
16 Notice of Appearance for the purpose of receiving ECF notifications of filings in this case. The
17 United States reserves its right to order any deposition transcripts and to intervene in this action,
18 for good cause, at a later date. The United States also reserves its right to seek the dismissal of
19 the relator’s action or claim pursuant to 31 U.S.C. § 3730(c)(2)(A), and to request a stay of
20 discovery pursuant to 31 U.S.C. § 3730(c)(4).

21 The United States is not requesting that the Court unseal any documents on file in this
22 action at this time because the deadline for the State of California to inform the Court of its
23 decision whether to intervene in this matter is not until February 20, 2020.

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Respectfully submitted,

DATED: February 14, 2020

DAVID L. ANDERSON
United States Attorney


NEILL T. TSENG
Assistant United States Attorney
Attorneys for the United States of America

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she caused a copy of the following document(s):

**UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION
(UNDER SEAL)**

to be served upon each of the persons indicated below at the address(es) shown:

Jennifer Gregory
Deputy Attorney General
California Department of Justice
2329 Gateway Oaks Drive, Suite 200
Sacramento, California 95833

Niall P. McCarthy, Esq.
Justin T. Berger
Cotchett, Pitre & McCarthy LLP
840 Malcom Road
Burlingame, California 94010

Geoffrey F. Margolis
Senior Litigation Counsel
CA Dept. of Insurance
Fraud Liaison Bureau
300 Capitol Mall, 11th Floor
Sacramento, CA 95814

☒ **BY FIRST CLASS MAIL** by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

☐ **CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

☐ **BY PERSONAL SERVICE (BY MESSENGER):** I caused such envelope to be delivered by hand to the person or offices of each addressee above.

☐ **BY FACSIMILE (FAX):** I caused each such document to be sent by facsimile to the person or offices of each addressee above.

☐ **BY E-MAIL:** I caused each such document to be sent by e-mail to the person or offices of each address above

☐ **BY FEDERAL EXPRESS**

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed February 14, 2020 at San Francisco, California

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4 _____

KATHY TERRY
Supervisory Legal Assistant